

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5366 of 1995

WITH

CIVIL APPLICATION NO. 33 OF 1997

For Approval and Signature:

Hon'ble MR.JUSTICE R.BALIA.

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

NEELABEN A PATEL

Versus

STATE OF GUJARAT

Appearance:

MR AJ PATEL for Petitioners
SERVED BY DS for Respondent No. 1, 4
MR HS MUNSHAW for Respondent No. 2
MR PRASHANT G DESAI for Respondent No. 3

CORAM : MR.JUSTICE R.BALIA.

Date of decision: 01/04/97

ORAL JUDGEMENT

Substantial reliefs which have been claimed in this petition are as under:

(A) The hon'ble court may be pleased to issue a writ of mandamus or any other appropriate writ, order or direction directing the concerned respondents to hand over vacant, peaceful and clear possession of the lands bearing Final Plots No. 677 and 678 of Wadaj Town Planning Scheme No. 28 and land admeasuring 1103 sq. mtr. just adjoining the said final plots in lieu of Final Plot No. 676 which has already been allotted to the petitioners under the said town planning scheme, forthwith.

(B) The hon'ble Court may be pleased to issue a writ of mandamus or any other appropriate writ, order or direction directing the concerned respondents to pay just compensation as may be determined by the hon'ble court having regard to the peculiar loss suffered by the petitioners on account of mental torture and agony suffered by them for all these years and the financial loss which they suffered on account of non-development of the lands allotted to them for all these years.

2. The averments of the petitioners were that the final plots Nos. 677 and 678 of Wadaj Town Planning Scheme No. 28 and land admeasuring 1103 sq. mtr. adjoining the said final plots in lieu of plot No. 676 had been allotted to the petitioners under the said Town Planning Scheme which is not being handed over to the petitioners. Therefore, a mandamus was sought.

3. By way of interim order the authorities were directed to hand over possession of final plots Nos. 677 and 678 of Town Planning Scheme No. 28 and land admeasuring 1103 sq. mtrs. just adjoining the aforesaid final plots within a period of 15 days from the date of order of this hon'ble court. This interim order was challenged by way of Letters Patent Appeal which was dismissed by order dated 19.12.1995. The Division Bench after detailing the facts of the case and noticing that the State Government by Resolution dated 6.12.1994 directed that the petitioners be given the land in question and noticing the undertaking given by the petitioners that they will not deal with or dispose of the land or part with the possession of the land in any manner and that they will not put up any construction on the same for a period of one year so that the Government can take any legal action for acquiring these lands, the

Government is not prejudiced and in the event of the court directing the petitioners to return the possession, they shall be in a position to do so subject to their right to challenge such a decision and after observing that in view of this clear and undisputed facts and long injustice suffered by the petitioners, the ad-interim order passed by the learned Single Judge does not call for any interference.

4. Thereafter, it appears that the State Government in its Town Planning Department has decided to amend the Scheme for which proceedings have been initiated by publishing the Scheme and invited objections. Pursuant thereto Civil Application No. 33 of 1997 has been filed seeking an amendment of the writ petition for challenging the action of the State Government for initiating the proceedings for varying the Town Planning Scheme.

5. Having carefully considered the rival submissions and contentions and perused the records it is apparent that so far as the relief (A) is concerned, it stands satisfied on compliance with the order made by way of interim relief inasmuch as the possession of the plots in question subject to the directions to the State Government has been delivered to the petitioners and they are in possession of the land. There is no fresh facts of dispossessing from the land in question. So far as the question of damages is concerned for delay in delivering the land, it cannot be subject matter of petition under Article 226 nor it is an ordinary practice of the court to assess and grant such damages. Therefore, the petition has served its purpose and does not survive for any adjudication.

6. So far as the Civil Application No. 33 of 1997 is concerned, variation in the Town Planning Scheme is entirely different and independent cause of action and which is not related to the main petition for which the petitioners can always claim relief by way of prosecuting separate and independent remedies as are available to him.

7. In view thereof, Special Civil Application as well as the Civil Application do not survive. The Special Civil Application is dismissed. Rule is discharged. It is made clear that the petitioners shall not be dispossessed from the land in question delivered to them in pursuance of the directives of the Government dated 6.12.1994 and thereafter it formed part of ad-interim relief except by adopting due procedure in accordance with law mainly on the basis of this order

discharging rule.. No order as to costs.

8. The Civil Application too is dismissed and notice
thereof is discharged.

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